

October 6, 2017

Ex Parte

Mr. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Rural Health Care Support Mechanism*, WC Docket No. 02-60

Dear Ms. Dortch,

On October 5, 2017, Nicolas J. Gasca, Associate Counsel of Tanana Chiefs Conference (“TCC”), Allison D. Rule, Partner as Marashlian & Donahue, LLC, and I met with Radhika Karmarkar, Regina Brown, Jonathan Lechter, Dana Bradford, Soumitra Das, Carol Pomponio, and Preston Wise of the Wireline Competition Bureau.

We discussed various topics related to the Request for Review and Waiver in the above-referenced docket that TCC filed on April 28, 2017. The attached summary provides additional information about the topics discussed at the meeting. Two documents that were presented at the meeting are also attached hereto.

Should you have any questions regarding this matter, please feel free to contact me directly.

Sincerely,



Ronald E. Quirk, Jr.
Counsel to Tanana Chiefs Conference

cc: Radhika Karmarkar
Regina Brown
Jonathan Lechter
Dana Bradford
Soumitra Das
Carol Pomponio
Preston Wise

Summary - FCC Meeting 10/5/2017

Review/Waiver Request Factual Summary

- TCC, through its HCPs provides health care services to 15,000 rural Alaskans who would otherwise be without it. TCC has an evergreen contract with USAC. RHC funding covers 98% of telemedicine costs in Alaska. USAC's actions cost TCC over \$1 million in health care funding for FY16: \$633,171 by not letting TCC file its 466s for three of its rural clinics and \$389,202.22 in prorated reduction in funding. **TCC CANNOT PROVIDE TELEMEDICINE SERVICES WITHOUT THIS FUNDING.** Services include electronic health record access, videoconferencing, computerized physician order entry, and dispensing medicine over long distances.
- USAC's new and suddenly announced filing deadlines for FY16 resulted in TCC missing filing windows for three of its clinics due to clerical errors (two were transitioning from satellite services during the windows, one involved a primary account did not have that clinic listed for 466 filing). TCC filed all its remaining 466s during the second filing window; USAC did not provide fair notice of, among other things, the proration possibility for filing in the second window.
- USAC reports that more than \$90 million of unused funding from the RHC Pilot Program is available for reallocation (U.S. Senate's estimate). USAC is required by FCC rules to earmark \$150 million per funding year for evergreen contract holders. Plus, USAC has more than \$35 million in reserve funding for FY16.
- TCC has a more than decade-long record of perfect compliance with the RHC Program's rules and policies, including timely filing. TCC has implemented a training and compliance plan to ensure that all future RHC filings will be timely and complete. A summary of that plan has been submitted to the Commission.

TCC's Requested Actions

- Order USAC to accept TCC's Forms 466 for the three subject rural health clinics.
- Fully fund TCC for FY16 by releasing \$1,022,373 for all of TCC's HCPs.

Legal, Regulatory and Policy Precedents for Granting Review/Waiver

- Letter to FCC dated February 16, 2017 from six U.S. Senators urged the FCC to release previously committed but unexpended funding from previous years to FY16 RHC applicants. The senators stated need for the additional funding to ensure rural HCPs do not face reductions in funding and flash cuts in services. The Senators averred that the FCC could immediately take this action on an interim basis and, because the money has already been allocated but not disbursed, there is no need to increase the USF Factor.

Denying TCC's requested actions will result in a devastating financial shortfall. Flash cuts to healthcare services to thousands of rural Alaskans cannot be avoided if TCC lacks the money to obtain the necessary telecommunications services.

- The Commission has granted waivers under similar circumstances. For example, the Commission permitted Universal Service Fund recipients to cure clerical and ministerial errors, *including late filing*, to receive full funding, in order to promote the requirements of Section 254 of the Communications Act. *See Request for Waiver and Review of Decisions of the Universal Service Administrator by Bishop Perry Middle School*, 21 FCC Rcd 5316 (2006) at ¶¶ 1-2. Section 254 states, in pertinent part, that consumers in rural areas should have access to telecommunications and information services. The Commission also stated that waivers such as this (allowing filers to submit Forms 466 after the deadline) can be granted, because they: (a) have a minimal effect on the Universal Service Fund (b) denial of the requested funding would inflict undue hardship on the applicants; and (c) there is no evidence of waste, fraud, or abuse. *Id.* at ¶¶ 2, 14.

All those factors are present in this case: (a) fully funding TCC would have a minimal effect of the Universal Service Fund because TCC is asking for funds that have already been collected but not disbursed; (b) denial of funding would have a devastating impact on the patients that use TCC's HCPS, as they would be forced forego critical medical treatment, as well as being unable to access prescription medicines; and (c) TCC asks only for what it would have received under the RHC if USAC had not refused to accept its three Forms 466 and had not prorated funding for those filing in the second window.

- The Commission has stated that, respecting RHC Pilot Program, recipients should be able to cure inadvertent application errors to ensure full funding. *See Rural Health Care Support Mechanism*, 22 FCC Rcd 20360 (2007) at ¶ 97, n.310.

TCC's errors were inadvertent ministerial errors. And, TCC has implemented a rigid training and compliance plan to ensure that these types of errors will not recur.

- The Commission waived its Form 466 filing deadline when the applicant's violation was a minor procedural error because "rigid adherence to filing procedures, which would have resulted in funding refusal, "does not further the public interest or the purposes of Section 254(h) of the Communications Act" *See In Request for Review Bradford Regional Medical Center Rural Health Care Universal Service Support Mechanism*, 22 FCC Rcd 7221 (2010) at ¶ 10.

Rigid adherence to the rules & USAC's procedures in this case would violate the statutory requirement and purpose of Section 254(h), which is to ensure that residents in rural areas have access to telecommunications and broadband services.

- The Commission implemented procedures for evergreen contracts so that HCPs can benefit from lower prices due to longer contract terms and streamlined administrative burdens. *See Rural Health Care Support Mechanism*, 27 FCC Rcd 16678 (2012) at ¶ 262. This is especially important in Alaska, "because the state's vast size, harsh winter

weather and sparse population make it challenging to deploy fiber or wireless networks in many rural areas [hence] [t]elecommunications services can thus be much more expensive to provide in rural Alaska locations than in urban Alaska locations.” *Id.* at ¶ 92, n.251.

The benefits of TCC’s evergreen contracts for its HCPs will be eviscerated if the TCC is not fully funded. Lack of funding will result in much higher prices for health care. Release of the funds already earmarked for TCC’s evergreen contracts will alleviate that problem.

- The Commission has expressed concerns about the reliability of satellite communications to provide advanced telecommunications services to rural areas. Particularly problematic are the relatively low transmission speeds and latency of satellite communications. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, 30 FCC Rcd 1375 (2015) at ¶¶ 9, 14, 24.

TCC is working with its service provider to install microwave links for communications to its HCPs. Many of its HCPs are/have been dependent on expensive and unreliable satellite services. The FY16 funding shortfall has halted this effort. TCC needs full funding in order to continue the transition from satellites to microwave links. If/when this transition is complete, it will result in lower prices and more reliable telehealth services for the HCPs.

- Chairman Pai has, on numerous occasions, publicly announced his support for the RHC Program and the critical function it serves by ensuring critical telemedicine services to underserved, rural areas. One example is contained in a letter Chairman Pai wrote to Senator Daines on this topic:

As the son of two doctors in rural Kansas, I understand how connectivity can play a transformative role in the provision of medical care. I recall my father driving many miles at times to see patients. Having seen today how telemedicine is being used to improve the well-being of rural Americans, I support the RHC program. As Chairman, I will work to ensure it efficiently provides needed connectivity to rural health care providers. *See Letter from FCC Chairman Ajit V. Pai to Senator Steve Daines (Sept. 13, 2017).* Text may be found on the [FCC's website](#).

Granting TCC’s Review/Waiver Request will go a long way toward ensuring the rural Alaskans have access to the health care they desperately need.



Memorandum re USAC Filing Deadlines

To: Victor Joseph, Tanana Chiefs Conference (TCC) Chief and President
From: Michael Humphrey, TCC Acting Executive Director of Information Technology (IT)
Cc: TCC IT Governance Committee, TCC Executive Managers
Re: TCC IT Plan to Comply with USAC & FCC Deadlines

Below is TCC Information Technology's plan to ensure compliance with USAC & FCC filing deadlines.

- **IT Governance Committee (ITG):** Created FCC / USAC standing agenda items for TCC's IT Governance committee's monthly meetings.
 - Standing Agenda Items:
 - Provide summary reports each month detailing USAC & FCC timelines and filing applications by the Executive Director of Information Technology to ensure all deadlines have been met.
 - Provide summary reports from ITG members of timeline / filing tasks and updates on recent USAC & FCC news and developments.
 - ITG Members include key personnel from TCC's Health and Administration Departments.
 - George Bird – Dental Director
 - Michael Humphrey – Acting Executive Director of Information Technology
 - Ben Shilling – Deputy Financial Officer
 - Brian Ridley – Executive Finance Officer
 - Caleb Posey – Information Security Manager
 - Crystal Stordahl – CHAP/CHC Director
 - Chris Simon – Deputy Director of Health Services
 - Heather Rogers – Executive Director of Human Resources
 - Jacoline Bergstrom – Executive Director of Health Services
 - Jennifer Eden – Chief Andrew Isaac Health Center Director
 - Robert Lucas – Corporate Information Security Officer
 - Robin Fowler – Corporate Compliance Officer
 - Marilyn Andon – Behavioral Health Director
 - Will Mayo – Executive Director of Tribal Government
 - Tiffany Simmons – Tribal Development and Planning Director
 - Victor Joseph – President
- **Tracking Spreadsheet:** Created and shared a circuit tracking spreadsheet to reconcile TCC villages with FCC & USAC records.
- **Calendaring:** Added all pertinent filing deadlines to the calendars of the following key IT staff:
 - Michael Humphrey – Acting Executive Director of Information Technology
 - Caleb Posey – Information Security Manager
 - Richard Stevens – ERP Systems Administrator
 - Pam Stewart – Help Desk Manager

United States Senate

WASHINGTON, DC 20510

February 27, 2017

Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai and FCC Commissioners:

Too many health care providers today – especially in rural areas – do not have access to affordable broadband of sufficient quality to support today's health care needs. Because rural areas have fewer doctors, aging populations, continuing economic challenges, and higher rates of serious injuries, chronic illnesses, and chemical dependency, increasing access to care in rural communities via broadband-enabled telemedicine has never been more important.

Unfortunately, health care providers that rely on the Federal Communications Commission's (FCC) Rural Health Care (RHC) program for broadband funding may see their support reduced or eliminated in the next few months. We ask that you take steps to leverage existing funding to avoid these reductions. Due to an unexpected recent surge in applications, the \$400 million cap on the RHC program has already been met or exceeded for FY 2016. The Universal Service Administrative Company (USAC) which administers the RHC program announced on January 13, 2017 that the third filing window for FY 2016 funding has been cancelled because all of the funding for FY 2016 has been exhausted, due to high demand.

As a result, there is no funding available in FY 2016 for new applicants including "Skilled Nursing Facilities" (SNFs), which are now eligible for program support due to recent federal legislation. In addition, existing healthcare providers that have relied on funding over the last several years may not receive the same funding they have received in years past and may have to drop some of their broadband connections, causing disruption and harm to patient care.

Furthermore, because of the high demand for funding and the \$400 million cap, applicants for FY 2017 funding are likely to apply early in the funding year, which could lead to an exhaustion of FY 2017 funds even earlier than in FY 2016.

The Rural Health Care program was initially used to enable rural healthcare providers simply to connect to the internet and send low-resolution X-rays and other medical tests to experts in urban healthcare facilities. Now that the technology has matured and innovation in telehealth continues to bring new services to rural areas, patients can have real-time two-way videoconferences with

medical experts, reducing their need to travel hours for a 30-minute consult at a physician's office, and doctors in rural America can collaborate with experts in their fields anywhere in the world. The growth in demand for funding for these high-capacity broadband circuits is strong evidence that broadband services provide tremendous value to rural patients, health care clinics and hospitals.

Unfortunately, the lack of funding for rural health care telemedicine services will harm several of our constituents, as these examples show:

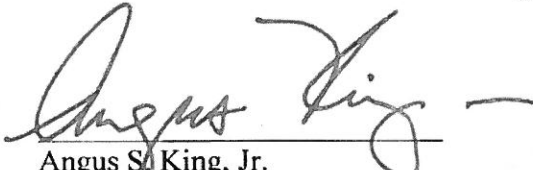
- Using the Rural Health Care Pilot Program funding, New England Telehealth Consortium (NETC) built a successful telehealth network that currently serves 321 hospitals, clinics, and behavioral health sites in Maine, New Hampshire and Vermont. This network, which provides high bandwidth private broadband telehealth connectivity and internet connectivity, is critical to the operational communications between health care sites in New England and to the continuation of care to several hundred thousand patients. The NETC network is reliant on the RHC program support and would be harmed if funding is delayed or reduced.
- The New Mexico Telehealth Alliance is managing the Southwest Telehealth Access Grid (SWTAG) consortium. The consortium serves several healthcare organizations in the region, such as the Primary Care Association and close to 100 Federally Qualified Health Centers, as well as over 200 hospitals and clinics in the region and even in other states that are joining the consortium beyond the Southwest. The funding provided through the FCC's RHC Fund are critical to providing telehealth services and health information exchange needed by resource-limited healthcare providers. Without this funding, many of the members could not afford the broadband needed to support their network requirements and address the healthcare needs of their patients. This will especially impact Native Americans who reside on Indian reservations where behavioral health services and suicide prevention efforts are underway using telehealth. Furthermore, lack of affordable broadband will impact tele-stroke programs that can evaluate and treat acute stroke patients in distant or rural hospitals, preventing avoidable brain damage.

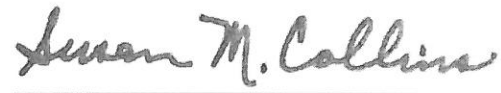
We ask you to address the future of the RHC as soon as possible. The Commission can and should take steps to avoid flash cuts or sudden funding reductions for health care providers that use this vital program. Specifically, we encourage you to act on the letter recently filed by the New England Telehealth Consortium and the Schools, Health & Libraries Broadband ("SHLB") Coalition and other requestors in the RHC docket. The SHLB letter proposes the FCC establish a mechanism similar to that in the E-rate program to allow previously committed but unexpended RHC funds from prior years be made available for current applicants. In addition, USAC is reporting that \$90 million of unused funding from the Pilot program may be available. Because previously committed funds have already been collected, re-allocation of these funds will not

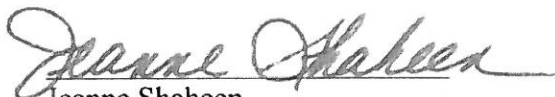
require increased universal service fund collections. The Commission could take such action immediately on an interim basis to ensure that health care providers and consortia do not face funding reductions, thereby giving the Commission time to work on strengthening the future of the RHC program.


We appreciate your attention on this important matter and your efforts on behalf of improving healthcare in rural America.

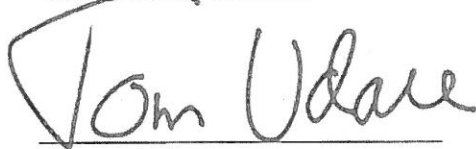
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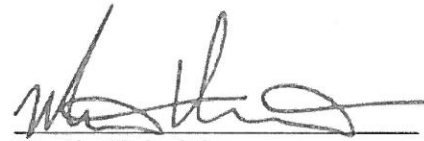

Angus S. King, Jr.
United States Senator


Susan M. Collins
United States Senator


Jeanne Shaheen
United States Senator


Margaret Wood Hassan
United States Senator


Tom Udall
United States Senator


Martin Heinrich
United States Senator